

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

COUNTEE WILSON, III,

Plaintiff,

Case No: 1:09-cv-878

v

HON. JANET T. NEFF

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

/

OPINION AND ORDER

Plaintiff seeks judicial review of a decision of the Commissioner of the Social Security Administration. 42 U.S.C. § 405(g). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (Dkt 12), recommending that this Court affirm the Commissioner's decision to deny Plaintiff's claim for Disability Insurance Benefits. The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation (Dkt 13). In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.¹

Plaintiff's objections essentially duplicate his arguments raised on appeal. Plaintiff argues that the Magistrate Judge erred in supporting the conclusion of the Administrative Law Judge (ALJ) that Plaintiff was not entitled to Disability Insurance Benefits (DIB). Plaintiff claims that he filed an appeal for both DIB and Supplemental Security Income (SSI) in 1990 and that the Social Security

¹Also pending before the Court is Plaintiff's Motion for Resolution of this case (Dkt 14), which is granted since this Opinion and Order fully resolves this case.

Administration erred in awarding him only SSI and not DIB in 1991. Following the favorable outcome on Plaintiff's SSI claim on April 24, 1991, Plaintiff received SSI benefits for about 14 years, until his spouse's income level made him ineligible. In 2005, Plaintiff again applied for benefits and was denied. This appeal followed.

The Magistrate Judge considered Plaintiff's claims of error on the part of the Social Security Administration and correctly concluded that he was ineligible for DIB benefits. The ALJ who issued the 2007 Decision made a careful examination of Plaintiff's earnings records, adjourning the hearing to make certain that all pertinent evidence was available for review, and concluded, on the basis of the evidence, that Plaintiff's earning records record shows that Plaintiff's insured status expired on June 30, 1975, almost 14 years before the date on which the 1991 ALJ determination found him to be disabled. Whether or not the ALJ who granted the SSI benefits in 1991 erred by not considering eligibility for DIB, Plaintiff's claim for DIB would have been denied if it had been considered at that time as well, on the basis of the same evidence. The Court finds Plaintiff's claim of error without merit.

The Magistrate Judge properly and fully reviewed the claims presented by Plaintiff and found no basis for reversing the decision to deny Disability Insurance Benefits.

Accordingly:

IT IS HEREBY ORDERED that Plaintiff's Motion for Resolution (Dkt 14) is GRANTED.

IT IS FURTHER ORDERED that the Objections (Dkt 13) are DENIED, the Report and Recommendation of the Magistrate Judge (Dkt 12) is APPROVED and ADOPTED as the Opinion of the Court, and the decision of the Commissioner of Social Security is AFFIRMED.

A Judgment will be entered consistent with this Opinion and Order.

Dated: July 7, 2011

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge